

LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952
PHONE (707) 782-4060 FAX (707) 782-4062
INFO@PACKARDLAWOFFICES.COM

NOV 15 2017

November 8, 2017

Via Certified Mail

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jeff Sessions, Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
950 Pennsylvania Avenue, Room 2615, NW
Washington, DC 20530

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: *California Sportfishing Protection Alliance v. The Shiloh Group, LLC et al; Case No. 4:16-cv-06499-DMR*

Dear Citizen Suit Coordinators,

On or about November 7, 2017 the parties in the above-captioned case agreed to enter into a settlement agreement resolving this matter. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed document is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the agreement, please feel free to contact me or counsel for Defendants listed below.

Sincerely,



Andrew L. Packard
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: via First Class Mail:
Alexis Strauss, Acting Regional Administrator, EPA Region 9

cc: via e-mail:
Wayne Rosenbaum, Counsel for Defendants
Laurie Kermish, EPA Region 9

NOV 15 2017

1 ANDREW L. PACKARD (State Bar No. 168690)
2 WILLIAM N. CARLON (State Bar No. 305739)
3 Law Offices of Andrew L. Packard
4 245 Kentucky Street, Suite B3
5 Petaluma, CA 94952
6 Tel: (707) 782-4060
7 Fax: (707) 782-4062
8 E-mail: andrew@packardlawoffices.com
9 wncarlon@packardlawoffices.com

10 REED W. SUPER (State Bar No. 164706)
11 SUPER LAW GROUP, LLC
12 180 Maiden Lane, Suite 603
13 New York, New York 10038
14 Tel: (212) 242-2355
15 Fax: (855) 242-7956
16 reed@superlawgroup.com

17 Attorneys for Plaintiff
18 CALIFORNIA SPORTFISHING
19 PROTECTION ALLIANCE

20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA

22 CALIFORNIA SPORTFISHING
23 PROTECTION ALLIANCE, a non-profit
24 corporation,

25 Plaintiff,

26 v.

27 THE SHILOH GROUP, LLC AND
THOMAS NELSON,

Defendants.

Case No. 4:16-cv-06499-DMR

[PROPOSED] CONSENT AGREEMENT
(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

23 **WHEREAS**, Plaintiff California Sportfishing Protection Alliance (hereinafter "CSPA") is a
24 non-profit public benefit corporation dedicated to the preservation, protection, and defense of the
25 environment, wildlife, and natural resources of California's waters;

26 **WHEREAS**, Defendants The Shiloh Group, LLC ("TSG") and Thomas Nelson (together
27 "Defendants") own an approximately 31-acre light industrial facility at 930 Shiloh Road, in Windsor,

1 California where TSG leases lots to approximately 60-80 tenant businesses (collectively, the
2 "Facility");

3 **WHEREAS**, CSPA and Defendants collectively shall be referred to as the "Parties;"

4 **WHEREAS**, the Facility discharges storm water from the Facility and adjacent property
5 owned by others into storm water conveyances owned by the City of Windsor, which, in turn,
6 discharges to Pruitt Creek (a map of the Facility is attached hereto as **Exhibit A** and incorporated
7 herein by reference);

8 **WHEREAS**, storm water discharges associated with industrial activity are regulated pursuant
9 to the National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000001,
10 State Water Resources Control Board ("State Board") Water Quality Order No. 14-57-DWQ, issued
11 pursuant to Section 402(p) of the Clean Water Act ("Act"), 33 U.S.C. §1342(p), (hereinafter "General
12 Permit") and, prior to July 1, 2015, were regulated by Water Quality Order No. 91-13-DWQ, as
13 amended by Water Quality Order 92-12-DWQ and 97-03-DWQ;

14 **WHEREAS**, on or about September 7, 2016, Plaintiff provided its first notice alleging
15 Defendants' violations of the Act ("Clean Water Act Notice Letter"), and of its intention to file suit
16 against Defendants to the Administrator of the United States Environmental Protection Agency
17 ("EPA"); the Administrator of EPA Region IX; the U.S. Attorney General; the Executive Director of
18 the State Board; the Executive Officer of the Regional Water Quality Control Board, North Coast
19 Region ("Regional Board"); and to Defendants, as required by the Act, 33 U.S.C. § 1365(b)(1)(A) (a
20 true and correct copy of CSPA's first Clean Water Act Notice Letter is attached hereto as **Exhibit B**
21 and incorporated herein by reference);

22 **WHEREAS**, on or about November 4, 2016, Plaintiff provided notice of its intention to file suit
23 against Defendants to California Public Enforcement Agencies, Mr. Nelson and Mr. Jared Carter, as
24 required by California Health & Safety Code §§ 25249.5 et seq. (commonly referred to as "Proposition
25 65"). (A true and correct copy of CSPA's Proposition 65 Notice Letter is attached hereto as **Exhibit C**
26 and incorporated herein by reference);

27 **WHEREAS**, on or about December 9, 2016, Plaintiff provided its second notice alleging
28

1 Defendants' violation of the Act. A true and correct copy of CSPA's second Clean Water Act Notice
2 Letter is attached hereto as **Exhibit D** and incorporated by reference;

3 **WHEREAS**, Defendants deny responsibility for any discharges of storm water associated with
4 industrial activity occurring at the Facility, deny the occurrence of the violations alleged in the Clean
5 Water Act Notice Letter and maintain that TSG has complied at all times with the provisions of the
6 General Permit and the Clean Water Act or, alternatively, that there are no "ongoing and continuous"
7 violations of the General Permit or the Act attributable to Defendants;

8 **WHEREAS**, Defendants represent that they do not currently lease any lots at the Facility to
9 any tenant who engages in industrial activity within the meaning of the Clean Water Act that does not
10 also have NEC coverage or a Waiver, as more fully described in Paragraphs 1.2(b) and (c) below;

11 **WHEREAS**, the Parties agree that it is in their mutual interest to resolve this matter as to all
12 entities and persons named in the Clean Water Act Notice Letters without litigation and to enter into
13 this Consent Agreement ("Consent Agreement" or "Agreement");

14 **WHEREAS**, on or about July 25, 2017, CSPA filed its First Amended Complaint, ECF No.
15 48, against Defendants in the United States District Court, Northern District of California ("the
16 Action");

17 **WHEREAS**, for purposes of this Agreement only, the Parties stipulate that venue is proper in
18 this Court, and that Defendants do not contest the exercise of jurisdiction by this Court to dismiss this
19 matter with prejudice under the terms of this Agreement;

20 **WHEREAS**, within five (5) calendar days of mutual execution, this Agreement shall be
21 submitted to the United States Department of Justice for the 45-day statutory review period, pursuant
22 to 33 U.S.C. § 1365(c);

23 **WHEREAS**, at the time the Agreement is submitted for approval to the United States
24 Department of Justice, CSPA shall submit a Notice of Settlement in the District Court and inform the
25 Court of the expected dismissal date following the expiration of the statutory review period identified
26 above;

27 **AND WHEREAS**, within ten (10) calendar days of expiration of the statutory review period,
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1 or the earlier receipt of non-objection from the United States Department of Justice, the Parties shall
2 file with the Court a Stipulation and Order that shall provide that the Complaint and all claims therein
3 shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) concurrently
4 with the District Court's retention of jurisdiction for the enforcement of this Agreement as provided
5 herein (the date of entry of the Order to dismiss shall be referred to herein as the "Court Approval
6 Date").

7 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING**
8 **PARTIES AS FOLLOWS:**

9 **I. COMMITMENTS OF TSG**

10 **1. Bi-Annual Notice to CSPA Regarding TSG's Tenants at the Facility.** Based on
11 TSG's conduct as the owner and landlord of the Facility, TSG shall not be required to enroll in the
12 Industrial General Storm Water Permit unless required to do so by the Regional Water Quality Control
13 Board. Instead, TSG shall perform the tasks identified in this Consent Agreement. TSG shall provide
14 CSPA with a list of all tenants operating businesses at the Facility on January 1 and July 1 throughout
15 the term of this Agreement. The list of tenants shall provide the following information: (a) name of
16 tenant; (b) location of leasehold; (c) primary SIC code as provided by the tenant to TSG. The first list
17 of tenants, provided on or about January 1, 2018, shall be accompanied by an affidavit from Defendants
18 attesting to the fact that as of January 1, 2018 no then-current tenants at the Facility engage in industrial
19 activity within the meaning of the Clean Water Act without either valid NEC coverage or a Waiver, as
20 more fully described in Paragraphs I.2(b) and (c) below.

21 **2. Implementation of Contractual Storm Water Management Practices.** Unless
22 otherwise indicated below, on or before January 1, 2018, TSG shall implement the following leasing
23 practices at the Facility:

24 (a) **No Industrial Tenants.** TSG shall not enter into any new lease with any tenant who
25 engages in industrial activity within the meaning of the Clean Water Act at the Facility, except in
26 accordance with the following provisions of this Paragraph 2.

27 (b) **No Exposure Certification.** Notwithstanding subpart (a) above, TSG may enter into a
28 new lease with a tenant who engages in industrial activity within the meaning of the Clean Water Act

1 at the Facility if the lease requires the tenant, who would otherwise be required to obtain coverage
2 under the General Permit:

3 i. prior to beginning industrial operations, to provide TSG with a description of its
4 intended operations that includes an NEC Checklist, as defined in the General Permit,
5 demonstrating that future operations are designed to comply with the no exposure
6 conditions set forth in Section XVII of the General Permit;

7 ii. agree, as a condition of tenancy, to maintain a condition of no exposure at all
8 times or to obtain a Waiver for Conditionally Covered Activities from the Regional
9 Board as described in subpart (c) below; and

10 iii. upon becoming eligible, to pay all required fees and submit a notice of intent for
11 no exposure certification ("NEC Coverage") under the General Permit, to receive NEC
12 Coverage under the General Permit from the Regional Board, to timely submit all
13 recertification materials required by the General Permit, to maintain compliance with no
14 exposure conditions at all times, and to provide copies of all correspondence between the
15 tenant and the Regional Board to TSG within a week of sending or receipt.

16 (c) Waiver for Conditionally Covered Activities. Notwithstanding subpart (a) above, TSG
17 may enter into a new lease with a tenant who engages in industrial activity within the meaning of the
18 Clean Water Act at the Facility, if the tenant is engaged in activities described under an SIC code for
19 which permit coverage is conditional upon choices the tenant makes regarding methods of operation,
20 and the tenant's activities and methods of operation meet the conditions of 40 C.F.R. 122.26(b)(14) for
21 operating conditionally without a permit (e.g., tenant operating a trucking fleet under SIC 4212 but not
22 engaging in any vehicle maintenance, including fueling or washing, at the Facility). To qualify under
23 this exception, the tenant's lease must require the tenant:

24 i. To submit to the Regional Board Permit Registration Documents ("PRDs"),
25 pursuant to Section II(B)(1) of the General Permit; and,
26
27
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1 ii. To obtain from the Regional Board a written determination that coverage under
2 the General Permit is not required because tenant conducts industrial activity within a
3 conditionally-covered SIC code in a manner that does not require coverage.

4 (d) Documentation of No Exposure Certification or Waiver. TSG shall incorporate into all
5 new leases provisions that require tenants who are eligible for a No Exposure Certification or a Waiver
6 to re-certify in writing to TSG, and upload such re-certification to the California Storm Water Multiple
7 Application and Report Tracking System ("SMARTS"), annually, that the industrial tenant is covered
8 by a Non-Exposure Certification or Waiver. TSG shall provide copies to CSPA of all correspondence
9 between TSG and any tenant pertaining to storm water matters that are the subject of Plaintiff's Notices
10 of Intent to Sue within a week of sending or receipt.

11 (e) Failure of the Regional Board to Approve NEC or Waiver. If the Regional Board
12 declines to grant NEC Coverage or a Waiver, or if a NEC Coverage or Waiver tenant no longer
13 complies with the terms of those exemptions (for example, refuses to comply with their lease, fails to
14 submit certification, has certification withdrawn by the Regional Board after inspection, is found liable
15 for storm water-related violations of the Clean Water Act in a citizen suit, etc.) TSG will immediately
16 notify CSPA and will, within ninety (90) days of learning that the tenant no longer meets the terms of
17 the exemptions above, either apply with the tenant as co-permittees for storm water coverage or
18 commence eviction proceedings. TSG will inform CSPA of the commencement of eviction
19 proceedings where those proceeding are the result of this paragraph 2.e and report the progress and
20 disposition of the eviction proceeding on a quarterly basis. If the proceeding does not conclude with
21 an eviction, TSG will apply with the tenant as co-permittees for storm water coverage.

22 **3. Implementation of Structural Storm Water Management Practices.** Within sixty
23 days (60) of the Court Approval Date, TSG shall commence the installation of a series of structural
24 changes to the storm water conveyance system at the Facility in order to improve the water quality of
25 the storm water discharges emanating from the Facility.¹ The structural changes will include a series
26 of linear sediment control BMPs along the concrete conveyance running along the western edge of the

27 ¹ As used herein, the term "commence" includes obtaining necessary approvals, if required, from local, state and federal
28 agencies for the installation of the sediment control BMPs described in this paragraph.

1 Facility and a detention basin, bio-swale or similar structural BMP at the foot of the concrete
2 conveyance (at its northern end on TSG' property) designed to reduce Total Suspended Solids and
3 other contaminants of concern associated with Total Suspended Solids. TSG has engaged a licensed
4 professional engineer to design these structural changes and specify a schedule of maintenance
5 activities to ensure the proper operation of these structural measures. The construction drawings and
6 maintenance schedule are attached hereto as **Exhibit E** and incorporated herein. The Parties recognize
7 that both DTSC and, or, the RWQCB are currently considering issuing directives to Ecodyne and/or,
8 Flour Corporation which may make the construction of the structural changes described in this
9 paragraph infeasible. Should it be determined that timely installation of the structural changes
10 becomes infeasible as a result of the issuance or publication of an intent to issue such an order or
11 inability to obtain necessary approvals from local state or federal agencies, the Parties will meet and
12 confer to agree upon alternative measures intended to achieve equal or greater water quality benefits
13 as would have been achieved by the structural changes described in this paragraph pursuant to
14 Paragraph 10 of this Consent Agreement. Moreover, in designing the structural changes, should the
15 licensed professional engineer identify alternative strategies that could result in equal or greater water
16 quality benefits, the Parties agree to meet and confer to discuss such alternatives.

17 **4. Inspections during the Term of This Agreement.** TSG shall permit representatives
18 of CSPA to perform up to three (3) physical inspections of the Facility during the term of this
19 Agreement. These inspections shall be performed by CSPA's counsel and consultants and may
20 include sampling, photographing, and/or videotaping and CSPA shall promptly provide to TSG a copy
21 of all sampling reports, photographs and/or video. CSPA shall provide at least four (4) business days
22 advance notice of such physical inspection, except that TSG shall have the right to deny access if
23 circumstances would make the inspection unduly burdensome and pose significant interference with
24 business operations or any party/attorney, or the safety of individuals. In such case, TSG shall specify
25 at least three (3) dates within the two (2) weeks after CSPA's noticed date upon which a physical
26 inspection by CSPA may proceed. TSG shall not make any alterations to Facility conditions during
27 the period between receiving CSPA's initial four (4) business days' advance notice and the start of
28

1 CSPA's inspection that TSG would not otherwise have made but for receiving notice of CSPA's
2 request to conduct a physical inspection of the Facility, excepting any actions taken in compliance
3 with any applicable laws or regulations and excepting any actions that are taken by TSG's tenants.
4 CSPA's inspection team shall consist of no more than three (3) persons each of whom shall have
5 executed the liability release attached hereto as **Exhibit F**.

6 **5. Communications To/From Regional and State Water Boards.** During the term of
7 this Agreement, TSG shall provide CSPA with copies of all documents submitted to the RWQCB or
8 the State Water Board, or received by TSG from, the Regional Water Board or the State Water Board
9 concerning storm water discharges from the Facility. Such documents and reports shall be provided to
10 CSPA pursuant to the Notice provisions set forth below and within one (1) week after TSG's
11 submission(s) to, or, receipt from, such agencies. During the term of this Agreement, CSPA shall
12 provide TSG with copies of all documents submitted to the RWQCB or the State Water Board, or
13 received by CSPA from, the Regional Water Board or the State Water Board related to TSG. Such
14 documents and reports shall be provided to TSG pursuant to the Notice provisions set forth below and
15 within one (1) week after CSPA's submission(s) to, or, receipt from, such agencies.

16
17 **II. MITIGATION, COMPLIANCE MONITORING AND FEES AND COSTS**

18 **6. Mitigation Payment In Lieu Of Civil Penalties under the Clean Water Act.** As
19 mitigation to address any potential harms from the Clean Water Act violations alleged in CSPA First
20 Amended Complaint, TSG agrees to pay the sum of Eighty-Five Thousand Dollars (\$85,000) to the
21 Rose Foundation for Communities and the Environment for projects to improve water quality on the
22 Russian River.

23 **7. Compliance Monitoring Funding.** To defray CSPA's reasonable investigative,
24 expert, consultant and attorneys' fees and costs associated with monitoring TSG's compliance with this
25 Agreement, TSG agree to contribute \$10,000 for each of the two Wet Seasons covered by this
26 Agreement (\$20,000 total for the life of the Agreement), to a compliance monitoring fund maintained
27 by counsel for CSPA.

1 **8. Reimbursement of Fees & Costs.** TSG agrees to reimburse CSPA in the amount of
2 \$220,000 to defray CSPA's reasonable investigative, expert, consultant, and attorneys' fees and costs,
3 and all other costs incurred as a result of investigating the activities at the Facility, bringing the action,
4 and negotiating a resolution of this action in the public interest.

5 **9. Installment Payments; Payee; Liquidation on Default.** Payment of the obligations
6 set forth in Paragraphs 6-8 above (totaling \$325,000) shall be remitted in eight (8) quarterly
7 installments, by the dates set forth below. All payments shall be made payable to the "Law Offices of
8 Andrew L. Packard Attorney Client Trust Account" and remitted to Plaintiff's counsel at the address
9 set forth in the Notice provisions herein.

<u>Remittance Due</u>	<u>Amount</u>
January 1, 2018	\$30,000
April 1, 2018	\$30,000
July 1, 2018	\$30,000
October 1, 2018	\$30,000
January 1, 2019	\$60,000
April 1, 2019	\$60,000
July 1, 2019	\$60,000
October 1, 2019	\$25,000
Total:	\$325,000

20 In the event that any payment owed by Defendants under this Agreement is not remitted to the Law
21 Offices of Andrew L. Packard on or before the Remittance Due date set forth above, Defendants shall
22 be deemed to be in default of their obligations under this Agreement. CSPA shall provide email notice
23 to Defendants of any default. If Defendants fail to remedy the default within five (5) business days of
24 such notice, then all future payments due hereunder shall become immediately due and payable, with
25 the prevailing federal funds rate applying to all interest accruing on unpaid balances due hereunder,
26 beginning on the due date of the funds in default. Payment to the Rose Foundation for Communities
27 and the Environment will be made by the Law Offices of Andrew Packard from the above payments.

1 **III. DISPUTE RESOLUTION AND ENFORCEMENT OF CONSENT AGREEMENT**

2 **10.** If a dispute under this Agreement arises, or either Party believes that a breach of this
3 Agreement has occurred, the Parties shall meet and confer in good faith within seven (7) days of
4 receiving written notification from the other Party of a request for a meeting to determine whether a
5 breach has occurred and to develop a mutually agreed upon plan, including implementation dates, to
6 resolve the dispute. If the Parties fail to meet and confer, or the meet-and-confer does not resolve the
7 issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have
8 occurred, either Party shall be entitled to all rights and remedies under the law, including filing a
9 motion with the District Court of California, Northern District, which shall retain jurisdiction over the
10 Action until the Termination Date for the limited purposes of enforcement of the terms of this
11 Agreement. The Parties shall be entitled to seek fees and costs incurred in any such motion.

12 **11. CSPA's Waiver and Release.** Upon the Court Approval Date of this Agreement,
13 CSPA, on its own behalf and on behalf of its members, subsidiaries, successors, assigns, directors,
14 officers, agents, attorneys, representatives, and employees, releases Mr. Nelson, Mr. Jared Carter, TSG
15 and its officers, directors, managers, members, employees, shareholders, parents, subsidiaries, and
16 affiliates, and each of its predecessors, successors and assigns, and each of their agents, attorneys,
17 consultants, and other representatives (each a "Released Defendant Party") from, and waives all
18 claims which arise from or pertain to the Action, including, without limitation, all claims for injunctive
19 relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
20 others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this
21 Action, for the alleged failure of TSG to comply with the Clean Water Act at the Facility, up to and
22 including the Court Approval Date of this Agreement.

23 **12. CSPA's Covenant Not To Sue Regarding Proposition 65 Claims.** CSPA, acting
24 on its own behalf, and not on behalf of the general public, agrees not to file any claims for relief
25 against Defendants under Proposition 65 based upon Plaintiff's November 4, 2016 Notice of Intent to
26 Sue pursuant to California Proposition 65, including, without limitation, all claims for injunctive
27 relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
28

1 others), costs, expenses or any other sum incurred or claimed or which could have been claimed, for
2 the alleged failure of TSG to comply with California's Proposition 65, up to and including the Court
3 Approval Date of this Agreement.

4 **13. Defendants' and Jared Carter's Waiver and Release.** Defendants and Jared
5 Carter, on their own behalf and on behalf of any Released Defendant Party under their control, release
6 CSPA (and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each
7 of their successors and assigns, and its agents, attorneys, and other representative) from, and waives all
8 claims which arise from or pertain to the Action, including all claims for fees (including fees of
9 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could
10 have been claimed for matters associated with or related to the Action.

11 **IV. MISCELLANEOUS PROVISIONS**

12 **14.** The Parties enter into this Agreement for the purpose of avoiding prolonged and
13 costly litigation. Nothing in this Agreement shall be construed as, and Defendants expressly do not
14 intend to imply, an admission as to any fact, finding, issue of law, or violation of law, nor shall
15 compliance with this Agreement constitute or be construed as an admission by Defendants of any fact,
16 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or
17 otherwise affect the obligation, responsibilities, and duties of the Parties under this Agreement.

18 **15.** The Agreement shall be effective upon entry by the Court Approval Date. The
19 Agreement shall terminate on the "Termination Date," which shall be January 31, 2020.

20 **16.** The Agreement may be executed in one or more counterparts which, taken together,
21 shall be deemed to constitute one and the same document. An executed copy of this Agreement shall
22 be valid as an original.

23 **17.** In the event that any one of the provisions of this Agreement is held by a court to be
24 unenforceable, the validity of the remaining provisions shall not be adversely affected.

25 **18.** The language in all parts of this Agreement, unless otherwise stated, shall be
26 construed according to its plain and ordinary meaning. This Agreement shall be construed pursuant to
27 the law of the United States, without regard to choice of law principles.
28

1 19. The undersigned are authorized to execute this Agreement on behalf of their
2 respective Parties and have read, understood and agreed to be bound by all of the terms and conditions
3 of this Agreement.

4 20. All agreements, covenants, representations and warranties, express or implied, oral or
5 written, of the Parties concerning the subject matter of this Agreement are contained herein. This
6 Agreement and its attachments are made for the sole benefit of the Parties, and no other person or
7 entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise
8 expressly provided for therein.

9 21. No third-party beneficiary will have any rights under this agreement except for the
10 TSG's related parties as provided for in Paragraph 10 of this Agreement

11 22. **Force Majeure.**

12 (a) No Settling Party shall be considered to be in default in the performance of any of its
13 obligations under this Consent Agreement when performance becomes impossible due to circumstances
14 beyond the Settling Party's control, including Force Majeure, which includes any act of god, war, fire,
15 earthquake, windstorm, flood or natural catastrophe; civil disturbance, vandalism, sabotage, or
16 terrorism; restraint by court order or public authority or agency; action or non-action by, or inability to
17 obtain the necessary authorizations, approvals, or permits from, any governmental agency
18 (notwithstanding the good faith efforts by Defendants to obtain such authorizations, approvals, or
19 permits); or inability to obtain equipment or materials from the marketplace if such materials or
20 equipment are not reasonably available. Delay in compliance with a specific obligation under this
21 Consent Agreement due to impossibility and/or Force Majeure as defined in this paragraph shall not
22 excuse or delay compliance with any or all other obligations required under this Consent Agreement.

23 (b) If Defendant claims compliance was or is impossible, it shall notify Plaintiff in writing
24 as soon as possible.

25 (c) Within ten (10) days of sending the Notice of Nonperformance, Defendant shall send
26 Plaintiff a description of the reason for the nonperformance and the specific obligations under the
27 Consent Agreement that are or have been affected by the Force Majeure. It shall describe the anticipated
28

1 length of time the delay may persist, the cause or causes of the delay, the good faith measures taken or
2 to be taken by Defendant to prevent or minimize the delay, the schedule by which the measures shall be
3 implemented, and the anticipated date of compliance. Defendant shall adopt all reasonable measures to
4 avoid and minimize such delays.

5 (d) The Settling Parties shall meet and confer in good faith concerning the non-performance
6 and, where the Settling Parties concur that performance was or is impossible due to an event or issue in
7 paragraph IV.20 (a), despite the timely good faith efforts of Defendant, new deadlines shall be
8 established.

9 (e) If Plaintiff disagrees with Defendant's notice of impossibility and/or Force Majeure, or
10 in the event that the Settling Parties cannot timely agree on the terms of new performance deadlines or
11 requirements, either party shall have the right to invoke the dispute resolution procedure pursuant to
12 Paragraph III.9 herein. In such proceeding, Defendant shall bear the burden of proving that any delay in
13 performance of any requirement of this Consent Agreement was caused or will be caused by
14 impossibility and/or Force Majeure and the extent of any delay attributable to such circumstances.

15 **23. Notices.** Any notices or documents required or provided for by this Agreement or
16 related thereto that are to be provided to CSPA pursuant to this Agreement shall be hand-delivered or
17 sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by
18 electronic mail transmission to the email addresses listed below:

19
20 William Jennings, Executive Director
21 California Sportfishing Protection Alliance
22 3536 Rainer Avenue
23 Stockton, California 95204
24 Tel. (209) 464-5067
25 E-mail: deltakeep@me.com

26 With copies sent to:

27 Andrew L. Packard
28 Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, California 94952
Tel: (707) 782-4060
E-mail: Andrew@packardlawoffices.com
and wncarlton@packardlawoffices.com

Any notices or documents required or provided for by this Agreement or related thereto that are to be provided to Defendants pursuant to this Agreement shall be sent by U.S. Mail, postage prepaid, and addressed as follows or, in the alternative, shall be sent by electronic mail transmission to the email addresses listed below:

Jared G. Carter
Carter Momsen PC
305 N. Main Street
P.O. Box 1709
Ukiah, CA 95482
E-mail: jaredcarter@pacific.net

With copies sent to:

S. Wayne Rosenbaum
Environmental Law Group LLP
Varco & Rosenbaum
225 Broadway, Suite 1900
San Diego, CA 92101
(619) 231-5853
swr@envirolawyer.com

Each Party shall promptly notify the other of any change in the above-listed contact information.

24. Signatures of the Parties transmitted by facsimile or email shall be deemed binding.

25. If for any reason the Court should decline to approve this Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Agreement within thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Agreement in a mutually acceptable manner, this Agreement shall become null and void.

26. This Agreement shall be deemed to have been drafted equally by the Parties, and shall not be interpreted for or against any Party on the ground that any such party drafted it.

27. This Agreement and the attachments contain all of the terms and conditions agreed upon by the Parties relating to the matters covered by the Agreement, and supersede any and all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the Parties, whether oral or written, respecting the matters covered by this Agreement.

28. This Agreement may be amended or modified only by a writing signed by the Parties or their authorized representatives.

1 The Parties hereto enter into this Agreement and respectfully submit it to the Court for its
2 approval and entry.

3 Dated: November 7, 2017

California Sportfishing Protection Alliance

4
5 By: 

6 William Jennings, Executive Director

7 Dated: November _____, 2017

The Shiloh Group, LLC

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9 By: _____

10 Jared Carter, Managing Member

11 Dated: November _____, 2017

Thomas Nelson

12 By: _____
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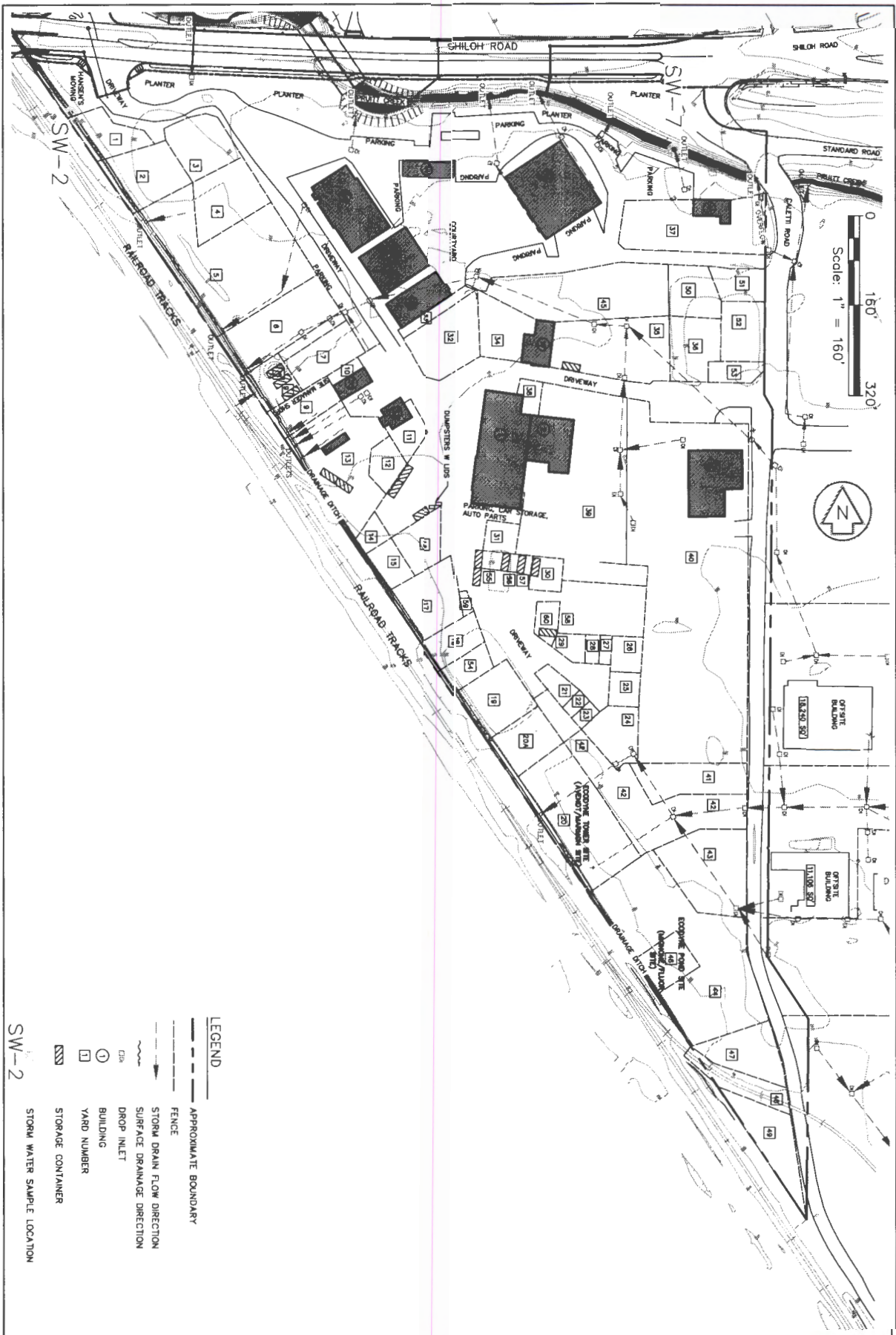
7 Dated: November_____, 2017 The Shiloh Group, LLC

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11 Jared Carter, Managing Member

12 Dated: November 7, 2017 Thomas Nelson
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EXHIBIT A – Facility Site Map



SW-2

LEGEND

- APPROXIMATE BOUNDARY
- - - FENCE
- STORM DRAIN FLOW DIRECTION
- - - SURFACE DRAINAGE DIRECTION
- DROP INLET
- BUILDING
- ① YARD NUMBER
- ▨ STORAGE CONTAINER
- STORM WATER SAMPLE LOCATION

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EXHIBIT B – First CWA Notice of Violation and Intent to Sue Letter

LAW OFFICES OF
ANDREW L. PACKARD

100 PETALUMA BLVD N, STE 301, PETALUMA, CA 94952
PHONE (707) 763-7227 FAX (707) 763-9227
INFO@PACKARDLAWOFFICES.COM

September 7, 2016

VIA CERTIFIED MAIL

Thomas Nelson, Managing Member
Shiloh Group LLC
930 Shiloh Road, Building 44
Windsor, CA 95492

Brian C. Carter, Agent for Service of Process
The Shiloh Group LLC
305 N. Main Street
Ukiah, CA 95482

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT")
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Nelson and Mr. Carter:

This firm represents California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at The Shiloh Group LLC's ("TSG") Industrial Park located at 930 Shiloh Road, in Windsor, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Thomas Nelson and The Shiloh Group, LLC shall hereinafter be collectively referred to as "TSG." CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which TSG discharges polluted storm water.

TSG is in ongoing violation of the substantive and procedural requirements of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 92-12-DWQ, Order No. 97-03-DWQ, and Order 2014-0057-DWQ ("General Permit" or "Permit").¹ On July 1, 2015 the 2015 General Permit went into effect, superseding the 1997 General Permit that was operative between 1997 and June 30, 2015. The 2015 General Permit includes many of the same fundamental requirements and implements many of the same statutory requirements as the 1997 General

¹ TSG submitted a Notice of Intent (NOI) to comply with the General Permit for the Windsor Facility on or about June 30, 2015.

Permit. Violation of both the 1997 and 2015 General Permit provisions is enforceable under the law. 2015 General Permit, Finding A.6.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TSG to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against TSG for violations of the Clean Water Act and the Permit.

I. Background.

A. The Clean Water Act.

Congress enacted the CWA in 1972 in order to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251. The Act prohibits the discharge of pollutants into United States waters except as authorized by the statute. 33 U.S.C. § 1311; *San Francisco BayKeeper, Inc. v. Tosco Corp.*, 309 F.3d 1153, 1156 (9th Cir. 2002). The Act is administered largely through the NPDES permit program. 33 U.S.C. § 1342. In 1987, the Act was amended to establish a framework for regulating storm water discharges through the NPDES system. Water Quality Act of 1987, Pub. L. 100-4, § 405, 101 Stat. 7, 69 (1987) (codified at 33 U.S.C. § 1342(p)); *see also Env'tl. Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 840-41 (9th Cir. 2003) (describing the problem of storm water runoff and summarizing the Clean Water Act's permitting scheme). The discharge of pollutants without an NPDES permit, or in violation of a permit, is illegal. *Ecological Rights Found. v. Pacific Lumber Co.*, 230 F.3d 1141, 1145 (9th Cir. 2000).

Much of the responsibility for administering the NPDES permitting system has been delegated to the states. *See* 33 U.S.C. § 1342(b); *see also* Cal. Water Code § 13370 (expressing California's intent to implement its own NPDES permit program). The CWA authorizes states with approved NPDES permit programs to regulate industrial storm water discharges through individual permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(b).

Pursuant to Section 402 of the Act, the Administrator of EPA has authorized California's State Board to issue individual and general NPDES permits in California. 33 U.S.C. § 1342

B. California's General Permit for Storm Water Discharges Associated with Industrial Activities

Between 1997 and June 30, 2015, the General Permit in effect was Order No. 97-03-DWQ, which CSPA refers to as the "1997 General Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the General Permit was reissued, including many of the same fundamental terms as the prior permit. For purposes of this notice letter, CSPA refers to the reissued permit as the "2015 General Permit." The 2015 General Permit rescinded in whole the 1997 General Permit, except for the expired permit's requirement that annual reports be submitted by July 1, 2015, and for purposes of CWA enforcement. 2015 General Permit, Finding A.6.

Facilities discharging, or having the potential to discharge, storm water associated with industrial activities that have not obtained an individual NPDES permit must apply for coverage under the General Permit by filing a Notice of Intent to Comply ("NOI"). 1997 General Permit, Provision E.1; 2015 General Permit, Standard Condition XXI.A. Facilities must file their NOIs before the initiation of industrial operations. *Id.* Facilities must strictly comply with all of the terms and conditions of the General Permit. A violation of the General Permit is a violation of the CWA. The General Permit contains three primary and interrelated categories of requirements: (1) discharge prohibitions, receiving water limitations and effluent limitations; (2) Storm Water Pollution Prevention Plan ("SWPPP") requirements; and (3) self-monitoring and reporting requirements.

C. TSG's Windsor Facility

TSG's primary industrial activities at the approximately 31-acre Facility vary with the approximately 60-80 tenant businesses. Among the industrial tenants, activities include fencing installation, wood pallet construction, structural rebar assembly, auto repair and trucking operations. The industrial activities at the Facility fall under a number of Standard Industrial Classification ("SIC") Codes, depending on what businesses are operating at any given time. As of the June 25, 2015 SWPPP the industrial activities at the Facility fall under the following SIC Codes:

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|--|--|
| - 0721 – "Crop Planting, Cultivating, and Protecting" | - 1799 – "Special Trade Contractors, Not Elsewhere Classified" |
| - 0762 – "Farm Management Services" | - 2448 – "Wood Pallets and Skids" |
| - 0782 – "Lawn and Garden Services" | - 2449 – "Wood Containers, Not Elsewhere Classified" |
| - 1521 – "General Contractors-Single-Family Houses" | - 3449 – "Miscellaneous Structural Metal Work" |
| - 1522 – "General Contractors-Residential Buildings, Other Than Single-Family" | - 4212 – "Local Trucking Without Storage" |

- 1531 – “Operative Builders”
- 1541 – “General Contractors-Industrial Buildings and Warehouses”
- 1542 – “General Contractors-Nonresidential Buildings, Other than Industrial Buildings and Warehouses”
- 1731 – “Electrical Work”
- 1741 – “Masonry, Stone Setting, and Other Stone Work”
- 1742 – “Plastering, Drywall, Acoustical, and Insulation Work”
- 1761 – “Roofing, Siding, and Sheet Metal Work”
- 1771 – “Concrete Work”
- 1796 – “Installation or Erection of Building Equipment, Not Elsewhere”
- 4213 – “Trucking, Except Local”
- 4214 – “Local Trucking With Storage”
- 4226 – “Special Warehousing and Storage, Not Elsewhere Classified”
- 7538 – “General Automotive Repair Shops”
- 7692 – “Welding Repair”
- 8711 – “Engineering Services”
- 8744 – “Facilities Support Management Services”
- 8999 – “Services, Not Elsewhere Classified”

TSG collects and discharges storm water associated with industrial activities at the Facility through at least fifteen (15) discharge points into Pruitt Creek, which joins Pool Creek and Windsor Creek, which drain into Mark West Creek, which drains into the Russian River. Pruitt Creek, Pool Creek, Windsor Creek, Mark West Creek, and the Russian River are waters of the United States within the meaning of the Clean Water Act.

The General Permit requires TSG to analyze storm water samples for TSS, pH, and Oil and Grease. 1997 General Permit, Section B.5.c.i; 2015 General Permit, Section XI.B.6. Facilities under SIC Codes 2448, 2449 and 3449 must also analyze storm water samples for Chemical Oxygen Demand (“COD”); Zinc (“Zn”); Nitrate plus Nitrite Nitrogen (“N+N”); Iron (“Fe”); and, Aluminum (“Al”). 1997 General Permit, Tables 1-2; 2015 General Permit Tables 1-2.

II. TSG’s Violations of the Act and Permit.

Based on its review of available public documents, CSPA is informed and believes that TSG is in ongoing violation of both the substantive and procedural requirements of the CWA and the General Permit. These violations are ongoing and continuous. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TSG is subject to penalties for violations of the Act since September 7, 2011.

A. TSG Discharges Storm Water Containing Pollutants in Violation of the General Permit’s Discharge Prohibitions, Receiving Water Limitations and Effluent Limitations.

TSG's storm water sampling results provide evidence of TSG's failure to comply with the General Permit's discharge prohibitions, receiving water limitations and effluent limitations. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

1. Applicable Water Quality Standards.

The General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. 1997 General Permit, Discharge Prohibition A.2; 2015 General Permit, Discharge Prohibition III.C. The General Permit also prohibits discharges that violate any discharge prohibition contained in the applicable Regional Water Board's Basin Plan or statewide water quality control plans and policies. 1997 General Permit, Receiving Water Limitation C.2; 2015 General Permit, Discharge Prohibition III.D. Furthermore, storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards in any affected receiving water. 1997 General Permit, Receiving Water Limitations C.1, C.2; 2015 General Permit, Receiving Water Limitations VI.A, VI.B.

Dischargers are also required to prepare and submit documentation to the Regional Board upon determination that storm water discharges are in violation of the General Permit's Receiving Water Limitations. 1997 General Permit, p. VII; 2015 General Permit, Special Condition XX.B. The documentation must describe changes the discharger will make to its current storm water best management practices ("BMPs") in order to prevent or reduce any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. *Id.*

The California Toxics Rule ("CTR") is an applicable water quality standard under the Permit, violation of which is a violation of Permit conditions. *Cal. Sportfishing Prot. Alliance v. Chico Scrap Metal, Inc.*, 2015 U.S. Dist. LEXIS 108314, *21 (E.D. Cal. 2015). CTR establishes numeric receiving water limits for toxic pollutants in California surface waters. 40 C.F.R. § 131.38. The CTR establishes the following numeric limits for pollutants discharged by TSG: Copper – 0.013 mg/L (maximum concentration); Chromium (III) – 0.550 mg/L (maximum concentration); Lead – 0.065 mg/L (maximum concentration); and Zinc – 0.112 mg/L (maximum concentration). The *Water Quality Control Plan for the North Coast Region (Revised May 2011)* ("Basin Plan") also sets forth water quality standards and prohibitions applicable to TSG's storm water discharges. The Basin Plan identifies present and potential beneficial uses for the Russian River, which include municipal and domestic water supply, hydropower generation, agricultural supply, industrial service supply, navigation, wildlife habitat, warm freshwater habitat, cold freshwater habitat, warm and cold spawning, and contact and non-contact water recreation.

2. Applicable Effluent Limitations.

Dischargers are required to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable ("BAT") for toxic

and nonconventional pollutants and best conventional pollutant control technology ("BCT") for conventional pollutants. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. Conventional pollutants include Total Suspended Solids, Oil & Grease, pH, Biochemical Oxygen Demand and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. 40 C.F.R. §§ 401.15-16.

Under the General Permit, benchmark levels established by the EPA ("EPA benchmarks") serve as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite BAT and BCT. *Santa Monica Baykeeper v. Kramer Metals*, 619 F.Supp.2d 914, 920, 923 (C.D. Cal 2009); Final Reissuance of NPDES Storm Water Multi-Sector General Permit for Industrial Activities, 65 Fed. Reg. 64746, 64766 (Oct. 30, 2000); 1997 General Permit, Effluent Limitations B.5-6; 2015 General Permit, Exceedance Response Action XII.A.

The following EPA benchmarks have been established for pollutants discharged by TSG: Total Suspended Solids – 100 mg/L; Oil & Grease – 15.0 mg/L; Aluminum – 0.75 mg/L; Cadmium – 0.0159 mg/L; Copper – 0.0636 mg/L; Iron – 1.0 mg/L; Lead – 0.0816 mg/L; Nickel – 1.417 mg/L; Zinc – 0.117 mg/L; Chemical Oxygen Demand – 120 mg/L; Nitrate plus Nitrite Nitrogen – 0.68 mg/L.

3. TSG's Storm Water Sample Results

The following discharges of pollutants from the Facility have violated the discharge prohibitions, receiving water limitations and effluent limitations of the Permit:

a. Discharge of Storm Water Containing Total Suspended Solids (TSS) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	TSS	230	100
4/22/16	SW7	TSS	350	100
3/21/16	SW7	TSS	490	100
12/21/15	SW-7	TSS	280	100
10/31/14	SW-2	TSS	210	100
10/31/14	SW-7	TSS	670	100
3/25/14	SW-2	TSS	170	100
3/25/14	SW-7	TSS	310	100
3/13/12	SW-2	TSS	260	100

3/13/12	SW-7	TSS	190	100
10/22/12	SW-2	TSS	410	100
10/22/12	SW-7	TSS	690	100
3/13/12	SW-1	TSS	110	100
3/13/12	SW-2	TSS	170	100
1/19/12	SW-1	TSS	380	100
1/19/12	SW-2	TSS	230	100
1/19/12	SW-4	TSS	270	100
1/19/12	SW-5	TSS	570	100
1/19/12	SW-6	TSS	650	100

b. Discharge of Storm Water Containing Zinc (Zn) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
4/22/16	SW2	Zn	0.24	0.117	0.12
12/21/15	SW-2	Zn	0.17	0.117	0.12
11/9/15	SW2	Zn	0.12	0.117	0.12
10/31/14	SW-2	Zn	0.27	0.117	0.12
3/25/14	SW-2	Zn	0.19	0.117	0.12
3/13/12	SW-2	Zn	0.30	0.117	0.12
10/22/12	SW-2	Zn	0.44	0.117	0.12
3/13/12	SW-1	Zn	0.16	0.117	0.12
3/13/12	SW-2	Zn	0.37	0.117	0.12
1/19/12	SW-1	Zn	0.33	0.117	0.12
1/19/12	SW-2	Zn	0.38	0.117	0.12
1/19/12	SW-3	Zn	0.35	0.117	0.12
1/19/12	SW-4	Zn	0.34	0.117	0.12
1/19/12	SW-5	Zn	0.45	0.117	0.12
1/19/12	SW-6	Zn	1.7	0.117	0.12

c. Discharge of Storm Water Containing Aluminum (Al) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	Al	8.8	0.75
3/21/16	SW2	Al	1.1	0.75
12/21/15	SW-2	Al	4.5	0.75
11/9/15	SW2	Al	2.0	0.75
10/31/14	SW-2	Al	8.0	0.75
3/25/14	SW-2	Al	4.1	0.75
3/13/12	SW-2	Al	6.4	0.75
10/22/12	SW-2	Al	11	0.75
3/13/12	SW-1	Al	5.9	0.75
3/13/12	SW-2	Al	6.6	0.75
1/19/12	SW-1	Al	9.5	0.75
1/19/12	SW-2	Al	5.9	0.75
1/19/12	SW-3	Al	1.7	0.75
1/19/12	SW-4	Al	7.8	0.75
1/19/12	SW-5	Al	18	0.75
1/19/12	SW-6	Al	18	0.75

d. Discharge of Storm Water Containing Copper (Cu) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
4/22/16	SW2	Cu	0.075	0.0332	0.013
12/21/15	SW-2	Cu	0.057	0.0332	0.013
10/31/14	SW-2	Cu	0.056	0.0332	0.013
3/25/14	SW-2	Cu	0.062	0.0332	0.013
11/19/13	SW-2	Cu	0.095	0.0332	0.013

3/13/12	SW-2	Cu	0.12	0.0332	0.013
10/22/12	SW-2	Cu	0.12	0.0332	0.013
3/13/12	SW-1	Cu	0.053	0.0332	0.013
3/13/12	SW-2	Cu	0.072	0.0332	0.013
1/19/12	SW-1	Cu	0.091	0.0332	0.013
1/19/12	SW-2	Cu	0.075	0.0332	0.013
1/19/12	SW-5	Cu	0.13	0.0332	0.013
1/19/12	SW-6	Cu	0.28	0.0332	0.013

**e. Discharge of Storm Water Containing Iron (Fe) at
Concentrations in Excess of Applicable EPA Benchmark Value**

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	Fe	9.9	1.00
3/21/16	SW2	Fe	1.5	1.00
12/21/15	SW-2	Fe	5.9	1.00
11/9/15	SW2	Fe	2.8	1.00
10/31/14	SW-2	Fe	11	1.00
3/25/14	SW-2	Fe	6.1	1.00
3/13/12	SW-2	Fe	11	1.00
10/22/12	SW-2	Fe	17	1.00
3/13/12	SW-1	Fe	7.3	1.00
3/13/12	SW-2	Fe	9.2	1.00
1/19/12	SW-1	Fe	14	1.00
1/19/12	SW-2	Fe	9.9	1.00
1/19/12	SW-3	Fe	2.5	1.00
1/19/12	SW-4	Fe	12	1.00
1/19/12	SW-5	Fe	27	1.00
1/19/12	SW-6	Fe	33	1.00

f. Discharge of Storm Water Containing Lead (Pb) at Concentrations in Excess of Applicable EPA Benchmark and CTR Values

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)	CTR Criteria (mg/L)
3/13/12	SW-2	Pb	0.069	0.0816	0.065
1/19/12	SW-3	Pb	0.12	0.0816	0.065
1/19/12	SW-6	Pb	0.33	0.0816	0.065

g. Discharge of Storm Water Containing Nitrate plus Nitrite Nitrogen (N+N) at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
4/22/16	SW2	N+N	1.1	0.68
3/21/16	SW2	N+N	.77	0.68
12/21/15	SW-2	N+N	3.0	0.68
11/9/15	SW2	N+N	12.0	0.68
10/31/14	SW-2	N+N	8.0	0.68
3/25/14	SW-2	N+N	11	0.68
11/19/13	SW-2	N+N	3.7	0.68
3/13/12	SW-2	N+N	6.2	0.68
10/22/12	SW-2	N+N	7.7	0.68
3/13/12	SW-1	N+N	1.8	0.68
3/13/12	SW-2	N+N	1.8	0.68
1/19/12	SW-1	N+N	4.9	0.68
1/19/12	SW-2	N+N	6.1	0.68
1/19/12	SW-3	N+N	2.3	0.68
1/19/12	SW-4	N+N	1.4	0.68
1/19/12	SW-5	N+N	6.0	0.68
1/19/12	SW-6	N+N	6.6	0.68

h. Discharge of Storm Water Containing pH at Concentrations in Excess of Applicable EPA Benchmark Value

Date	Discharge Point	Parameter	Concentration in Discharge (mg/L)	EPA Benchmark Value (mg/L)
3/25/14	SW-7	pH	10.02	6.0 – 9.0

i. TSG's Sample Results Are Evidence of Violations of the General Permit

TSG's sample results demonstrate violations of the Permit's discharge prohibitions, receiving water limitations and effluent limitations set forth above. CSPA is informed and believes that TSG has known that its storm water contains pollutants at levels exceeding General Permit standards since at least September 7, 2011.

CSPA alleges that such violations occur each time storm water discharges from the Facility. Attachment A hereto, sets forth the specific rain dates on which CSPA alleges that TSG has discharged storm water containing impermissible levels of Total Suspended Solids, pH, Aluminum, Copper, Iron, Lead, Zinc, and Nitrate plus Nitrite Nitrogen in violation of the General Permit. 1997 General Permit, Discharge Prohibition A.2, Receiving Water Limitations C.1 and C.2; 2015 General Permit, Discharge Prohibitions III.C and III.D, Receiving Water Limitations VI.A, VI.B.

4. TSG Has Failed to Implement BAT and BCT

Dischargers must implement BMPs that fulfill the BAT/BCT requirements of the CWA and the General Permit to reduce or prevent discharges of pollutants in their storm water discharges. 1997 General Permit, Effluent Limitation B.3; 2015 General Permit, Effluent Limitation V.A. To meet the BAT/BCT standard, dischargers must implement minimum BMPs and any advanced BMPs set forth in the General Permit's SWPPP Requirements provisions where necessary to reduce or prevent pollutants in discharges. *See* 1997 General Permit, Sections A.8.a-b; 2015 General Permit, Sections X.H.1-2.

TSG has failed to implement the minimum BMPs required by the General Permit, including: good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Permit, Section X.H.1(a-g). TSG has further failed to implement advanced BMPs necessary to reduce or prevent discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards, including: exposure minimization BMPs; containment and discharge reduction BMPs; treatment control BMPs; or other advanced BMPs necessary to comply with the General Permit's effluent limitations. 1997 General Permit, Section A.8.b; 2015 General Permit, Sections X.H.2.

Each day that TSG has failed to develop and implement BAT and BCT at the Facility in

violation of the General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). TSG has been in violation of the BAT and BCT requirements at the Facility every day since at least September 7, 2011.

5. TSG Has Failed to Implement an Adequate Monitoring Implementation Plan.

The General Permit requires dischargers to implement a Monitoring Implementation Plan. 1997 General Permit Section B; 2015 General Permit, Section X.I. As part of their monitoring plan, dischargers must identify all storm water discharge locations. 1997 General Permit Section A.4.b; 2015 General Permit, Section X.I.2. Dischargers must then conduct monthly visual observations of each drainage area, as well as visual observations during discharge sampling events. 1997 General Permit Section B.4 and 8; 2015 General Permit, Section XI.A.1 and 2.

Dischargers must collect and analyze storm water samples from two (2) storm events within the first half of each reporting year (July 1 to December 31) and two (2) storm events during the second half of each reporting year (January 1 to June 3). 2015 General Permit, Section XI.B. Section XI.B requires dischargers to sample and analyze during the wet season for basic parameters such as pH, total suspended solids (“TSS”) and oil and grease (“O&G”), certain industry-specific parameters set forth in Table 2 of the General Permit, and other pollutants likely to be in the storm water discharged from the facility based on the pollutant source assessment. 2015 General Permit, Section XI.B.6. Dischargers must submit all sampling and analytical results via SMARTS within thirty (30) days of obtaining all results for each sampling event. 2015 General Permit Section XI.B.11. TSG has failed to develop and implement an adequate Monitoring Implementation Plan. These failures include: not sampling from all discharge locations, not analyzing all samples for all required parameters and using incorrect test methods to analyze certain parameters.

Each day that TSG has failed to develop and implement an adequate Monitoring Implementation Plan is a separate and distinct violation of the Act and Permit. TSG has been in violation of the Monitoring Implementation Plan requirements every day since at least September 7, 2011.

6. TSG Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

The General Permit requires dischargers to develop and implement a site-specific SWPPP. 1997 General Permit, Section A.1; 2015 General Permit, Section X.A. The SWPPP must include, among other elements: (1) the facility name and contact information; (2) a site map; (3) a list of industrial materials; (4) a description of potential pollution sources; (5) an assessment of potential pollutant sources; (6) minimum BMPs; (7) advanced BMPs, if applicable; (8) a monitoring implementation plan; (9) annual comprehensive facility compliance evaluation; and (10) the date that the SWPPP was initially prepared and the date of each SWPPP amendment, if applicable. *See id.*

Dischargers must revise their SWPPP whenever necessary and certify and submit via the Regional Board's Storm Water Multiple Application and Report Tracking System ("SMARTS") their SWPPP within 30 days whenever the SWPPP contains significant revisions(s); and, certify and submit via SMARTS for any non-significant revisions not more than once every three (3) months in the reporting year. 2015 General Permit, Section X.B; see also 1997 General permit, Section A.

CSPA's investigation indicates that TSG has been operating with an inadequately developed or implemented SWPPP in violation of General Permit requirements. TSG has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility's numerous effluent limitation violations. Each day TSG failed to develop and implement an adequate SWPPP is a violation of the General Permit. The SWPPP violations described above were at all times in violation of Section A of the 1997 General Permit, and Section X of the 2015 General Permit. TSG have been in violation of these requirements at the Facility every day since at least September 7, 2011.

III. Persons Responsible for the Violations.

CSPA puts TSG on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts TSG on formal notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainer Avenue
Stockton, CA 95204
(209) 464-5067

V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
100 Petaluma Boulevard North, Suite 301
Petaluma, CA 94952
(707) 763-7227
Andrew@PackardLawOffices.com

VI. Conclusion

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against TSG and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard", written over a horizontal line.

Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for California Sportfishing Protection
Alliance

SERVICE LIST

VIA CERTIFIED MAIL

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard Suite A
Santa Rosa, CA 95403

ATTACHMENT A
Notice of Intent to File Suit, TSG
Significant Rain Events,* September 7, 2011 – September 7, 2016

October 4, 2011	October 22, 2012	June 26, 2013	November 30, 2014
October 5, 2011	October 23, 2012	September 21, 2013	December 1, 2014
October 6, 2011	October 24, 2012	September 22, 2013	December 2, 2014
October 11, 2011	October 25, 2012	October 1, 2013	December 3, 2014
November 6, 2011	November 1, 2012	November 19, 2013	December 4, 2014
November 12, 2011	November 17, 2012	November 20, 2013	December 6, 2014
November 20, 2011	November 18, 2012	December 7, 2013	December 9, 2014
November 24, 2011	November 20, 2012	February 2, 2014	December 11, 2014
November 25, 2011	November 21, 2012	February 3, 2014	December 12, 2014
December 15, 2011	November 28, 2012	February 6, 2014	December 13, 2014
January 20, 2012	November 29, 2012	February 8, 2014	December 15, 2014
January 21, 2012	November 30, 2012	February 9, 2014	December 16, 2014
January 22, 2012	December 1, 2012	February 10, 2014	December 17, 2014
January 23, 2012	December 2, 2012	February 16, 2014	December 18, 2014
February 7, 2012	December 3, 2012	February 27, 2014	December 19, 2014
February 8, 2012	December 5, 2012	February 28, 2014	December 20, 2014
February 11, 2012	December 16, 2012	March 1, 2014	December 21, 2014
February 13, 2012	December 17, 2012	March 4, 2014	January 17, 2015
February 29, 2012	December 21, 2012	March 6, 2014	February 7, 2015
March 1, 2012	December 22, 2012	March 26, 2014	February 8, 2015
March 12, 2012	December 23, 2012	March 27, 2014	February 9, 2015
March 13, 2012	December 24, 2012	March 29, 2014	March 23, 2015
March 14, 2012	December 25, 2012	March 30, 2014	April 6, 2015
March 15, 2012	December 26, 2012	April 1, 2014	April 7, 2015
March 16, 2012	December 29, 2012	April 2, 2014	April 8, 2015
March 17, 2012	January 6, 2013	April 4, 2014	April 25, 2015
March 23, 2012	January 24, 2013	April 5, 2014	July 10, 2015
March 24, 2012	February 20, 2013	April 26, 2014	September 17, 2015
March 25, 2012	March 6, 2013	September 18, 2014	October 29, 2015
March 27, 2012	March 7, 2013	September 25, 2014	November 2, 2015
March 28, 2012	March 20, 2013	October 15, 2014	November 9, 2015
March 31, 2012	March 21, 2013	October 25, 2014	November 10, 2015
April 1, 2012	March 31, 2013	October 26, 2014	November 15, 2015
April 10, 2012	April 1, 2013	November 1, 2014	November 25, 2015
April 11, 2012	April 4, 2013	November 13, 2014	December 4, 2015
April 12, 2012	April 5, 2013	November 19, 2014	December 5, 2015
April 13, 2012	May 28, 2013	November 20, 2014	December 6, 2015
April 24, 2012	June 10, 2013	November 21, 2014	December 7, 2015
April 25, 2012	June 25, 2013	November 22, 2014	December 11, 2015
December 10, 2015	March 14, 2016	November 29, 2014	December 13, 2015
December 14, 2015	April 9, 2016		

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A
Notice of Intent to File Suit, TSG
Significant Rain Events,* September 7, 2011 – September 7, 2016

December 19, 2015	April 10, 2016
December 21, 2015	April 14, 2016
December 22, 2015	April 22, 2016
December 24, 2015	April 23, 2016
January 4, 2016	May 8, 2016
January 5, 2016	May 22, 2016
January 6, 2016	June 18, 2016
January 7, 2016	
January 9, 2016	
January 10, 2016	
January 13, 2016	
January 14, 2016	
January 15, 2016	
January 16, 2016	
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January 30, 2016	
February 18, 2016	
February 19, 2016	
February 20, 2016	
March 3, 2016	
March 4, 2016	
March 5, 2016	
March 6, 2016	
March 7, 2016	
March 8, 2016	
March 9, 2016	
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March 12, 2016	
March 13, 2016	
March 21, 2016	
March 22, 2016	

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

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EXHIBIT C –Proposition 65 Notice of Violation and Intent to Sue

LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

November 4, 2016

VIA CERTIFIED MAIL

Public Enforcement Agencies
(See Certificate of Service, attached)

Thomas Nelson
The Shiloh Group LLC
930 Shiloh Road, Building 44
Windsor, CA 95492

Brian C. Carter, Agent for Service of Process
The Shiloh Group LLC
305 N. Main Street
Ukiah, CA 95482

**NOTICE OF VIOLATION AND INTENT TO FILE SUIT UNDER
HEALTH & SAFETY CODE § 25249.5 (California Safe Drinking Water and
Toxic Enforcement Act, a.k.a. "Proposition 65")**

Dear Public Enforcement Agencies, Mr. Nelson and Mr. Carter:

This office represents the California Sportfishing Protection Alliance ("CSPA"), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to safeguarding the public from health hazards, reducing the use and misuse of toxic substances, encouraging corporate responsibility, and ensuring safe drinking water for consumers. CSPA brings this action in the public interest, pursuant to Health & Safety Code § 25249.7(d). Unless otherwise noted, The Shiloh Group, LLC shall hereinafter be referred to as the "Violator."

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code § 25249.5 *et seq.* (commonly referred to as "Proposition 65"). This letter serves to provide the public prosecutors and the Violator with CSPA's notification of these violations and intent to sue.

Pursuant to Health & Safety Code § 25249.7(d), CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public prosecutors commence and diligently prosecute an action against the Violator for the same violations. A summary of the statute and its implementing regulations,

which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Identity of Listed Chemicals

The Violator is a “person[s] in the course of doing business” as defined in Health & Safety Code § 25249.11, that discharges, deposits, or releases Proposition 65-listed chemicals into existing sources of drinking water not designated as exempt by the Safe Drinking Water Act of 1974 (42 U.S.C. § 300(f) *et seq.*) in violation of Health and Safety Code § 25249.5. These violations involve the discharge and/or release of the chemicals listed below:

- 1,1,1,2-Tetrachloroethane
- 1,1,2,2-Tetrachloroethane
- 1,1-Dichloroethane
- 1,2,3,4,7,8-Hexachlorodibenzo-p-dioxin
- 1,2,3,6,7,8-Hexachlorodibenzo-p-dioxin
- 1,2,3,7,8,9-Hexachlorodibenzo-p-dioxin
- 1,2,3-Trichloropropane
- 1,2-Dibromo-3-chloropropane
- 1,2-Dichloropropane
- 1,3-Dichloropropane
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin
- 2,4-Dinitrotoluene
- 2,6-Dinitrotoluene
- 3,3'-Dichlorobenzidine
- Aldrin
- Arsenic
- Azobenzene
- Benzene
- Beryllium
- bis(2-Chloroethyl)ether
- Bromodichloromethane
- Bromoform
- Cadmium
- Chloroethane
- Chloroform
- Chromium
- Chrysene
- Cobalt
- Dibenz(a,h)anthracene
- Dibenzofuran
- Dieldrin
- Diethyl
- Dimethyl
- Di-n-butylphthalate
- Endrin
- Ethylbenzene
- Heptachlor
- Hexachlorobenzene
- Hexachlorobutadiene
- Hexachloroethane
- Indeno(1,2,3-cd)pyrene
- Lead
- Mercury
- Methyl
- Naphthalene
- Nickel
- Nitrobenzene
- N-Nitrosodi-n-propylamine
- N-Nitrosodiphenylamine
- Pentachlorophenol
- Polychlorinated Biphenyls
- Styrene
- Tetrachloroethene
- Toluene
- Toxaphene
- Vinyl acetate

These chemicals have been on the Proposition 65 list for more than the twenty months grace period provided under Health & Safety Code § 25249.9(a). These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by the Violator from the Shiloh Group LLC facility located at 930 Shiloh Road in Windsor ("Facility") in violation of Health & Safety Code § 25249.5.

Sources of Drinking Water

The Violator is discharging the chemicals listed above from the Facility to designated sources of drinking water in violation of Proposition 65. A "source of drinking water" means either a present source of drinking water or water which is identified or designated in a Water Quality Control Plan adopted by a Regional Water Quality Control Board as being suitable for domestic or municipal uses. Health & Safety Code § 25249.11(d).

The Violator is allowing storm water contaminated with the chemicals listed above to discharge and/or release from the Facility into Pruitt Creek, which joins with Pool Creek, Windsor Creek, and Mark West Creek, which ultimately drain to the Russian River. The Russian River is designated as an existing source of municipal and domestic drinking water in the "*Water Quality Control Plan for the North Coast Region (Revised May 2011)*," generally referred to as the "Basin Plan." Basin Plan, 2-8.00.

Approximate Time Period of Violations

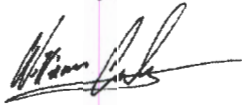
Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2008. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. However, CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel, listed below.

Notice of Violation, Health & Safety Code §25249.5 *et seq.*
November 4, 2016
Page 4

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
Tel. (707) 763-7227
Fax. (707) 763-9227
andrew@PackardLawOffices.com
wncarlon@PackardLawOffices.com

Sincerely,

A handwritten signature in black ink, appearing to read "William N. Carlon", with a long horizontal flourish extending to the right.

William N. Carlon
Attorneys for Plaintiff
California Sportfishing Protection Alliance

cc: Certificate of Service

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EXHIBIT D – Second CWA Notice of Violation and Intent to Sue Letter

LAW OFFICES OF
ANDREW L. PACKARD

245 KENTUCKY STREET, SUITE B3, PETALUMA, CA 94952

PHONE (707) 763-7227 FAX (707) 763-9227

INFO@PACKARDLAWOFFICES.COM

December 9, 2016

VIA CERTIFIED MAIL

Thomas Nelson, Managing Member
Shiloh Group LLC
930 Shiloh Road, Building 44
Windsor, CA 95492

Brian C. Carter, Agent for Service
The Shiloh Group LLC
305 N. Main Street
Ukiah, CA 95482

**Re: NOTICE OF VIOLATIONS AND INTENT TO FILE SUIT UNDER THE
FEDERAL WATER POLLUTION CONTROL ACT ("CLEAN WATER ACT")
(33 U.S.C. §§ 1251 *et seq.*)**

Dear Mr. Nelson and Mr. Carter:

This firm represents California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at The Shiloh Group LLC's ("TSG") Industrial Park located at 930 Shiloh Road, in Windsor, California (the "Facility"). This letter is being sent to you as the responsible owners, officers and/or operators of the Facility. Unless otherwise noted, Thomas Nelson and The Shiloh Group, LLC shall hereinafter be collectively referred to as "TSG." CSPA is a non-profit association dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters, including the waters into which TSG discharges polluted storm water.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TSG to a penalty of up to \$37,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

The Clean Water Act requires that sixty (60) days prior to the initiation of a citizen-enforcement action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen enforcer must give notice of its intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the Chief Administrative Officer of the water

pollution control agency for the State in which the violations occur. *See* 40 C.F.R. § 135.2. As required by the Act, this letter provides statutory notice of the violations that have occurred, and continue to occur, at the Facility. 40 C.F.R. § 135.3(a). At the expiration of sixty (60) days from the date of this letter, CSPA intends to file suit under Section 505(a) of the Act in federal court against TSG for violations of the Clean Water Act and the Permit.

I. The Shiloh Group, LLC Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States Without a Permit.

Under the Act, it is unlawful to discharge pollutants from a “point source” to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984) (citing 33 U.S.C. § 1311(a)). Section 301(a) of the Clean Water Act prohibits “the discharge of any pollutants by any person . . .” except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to “[a]ny person who discharges or proposes to discharge pollutants. . . .” 40 C.F.R. § 122.30(a).

The term “discharge of pollutants” means “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made water bodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Shiloh Group, LLC currently discharges, and will continue to discharge, Total Suspended Solids, Aluminum, Chromium, Copper, Iron, Lead, Nickel, Zinc, Nitrate plus Nitrite Nitrogen, and Chemical Oxygen Demand (“the Pollutants”) from the Facility through numerous discharge points connected to a system of underground storm water conveyances throughout the 31-acre Facility and into Pruitt Creek, which joins Pool Creek and Windsor Creek, which drain into Mark West Creek, which drains into the Russian River without a valid NPDES permit. Pruitt Creek, Pool Creek, Windsor Creek, Mark West Creek, and the Russian River are waters of the United States. Accordingly, The Shiloh Group LLC’s discharges of water containing Pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Shiloh Group, LLC has the duty to apply for an NPDES permit, because it discharges pollutants from the Facility to navigable waters. The Shiloh Group, LLC has failed to meet this duty, and has not applied

for a current NPDES permit, violating Section 301(a) of the Act. The Shiloh Group, LLC has discharged, and continues to discharge, pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge¹ of storm water from the Facility without a permit since December 1, 2016, including but not limited to December 7, 8 and 9, 2016. These discharges are the activities alleged to have caused and continuing to cause these violations. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

These unlawful discharges are ongoing. The Shiloh Group, LLC is subject to penalties for violations of the Act since December 1, 2016.

II. Persons Responsible for the Violations.

CSPA puts TSG on notice that they are the persons and entities responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts TSG on formal notice that it intends to include those persons in this action.

III. Name and Address of Noticing Parties.

The name, address and telephone number of each of the noticing parties is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainer Avenue
Stockton, CA 95204
(209) 464-5067

IV. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Andrew L. Packard
William N. Carlon
Law Offices of Andrew L. Packard
245 Kentucky Street, Suite B3
Petaluma, CA 94952
(707) 763-7227
Andrew@PackardLawOffices.com

¹ A “measurable discharge” is presumed to occur during a storm event of 0.1 inches of precipitation or more.

V. Conclusion

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the CWA against TSG and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew L. Packard", written in a cursive style.

Andrew L. Packard
Law Offices of Andrew L. Packard
Counsel for California Sportfishing Protection Alliance

SERVICE LIST

VIA CERTIFIED MAIL

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Jared Blumenfield, Regional Administrator
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

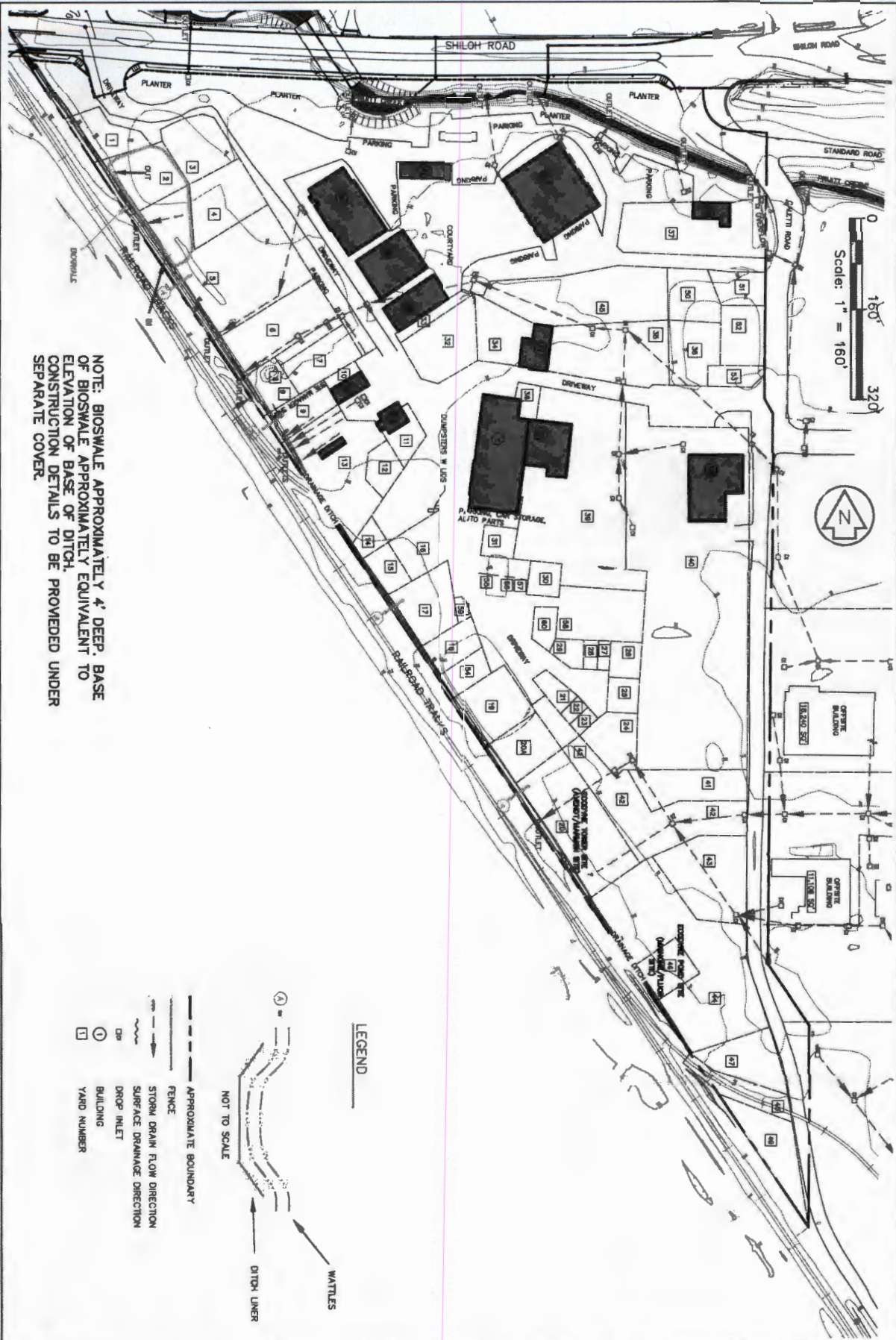
Hon. Loretta Lynch
U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Matthias St. John, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard Suite A
Santa Rosa, CA 95403

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EXHIBIT E – CONSTRUCTION DRAWING AND MAINTENANCE SCHEDULE



TRANS TECH CONSULTANTS

930 SHILOH RD., BLDG. 44, SUITE J
WINDSOR, CA 95492
PHONE: 707-857-8408 FAX: 707-837-7334

DRAFT FOR EXHIBIT B

930 SHILOH ROAD
WINDSOR, CA 95492

JOB #: 2292.01

DATE: 10/20/2017

DRAWN: MAL

FIGURE

1

NOTE: The "schedule of maintenance activities to ensure the proper operation of these structural measures" (referenced in Paragraph 1.3 of this Agreement) is expected to be completed shortly, and will be incorporated herein, as part of **Exhibit E**, before this document is filed with the Court.

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EXHIBIT F – LIABILITY RELEASE

EXHIBIT F

TSG FACILITY ACCESS VISITOR RELEASE FORM AND WAIVER OF LIABILITY

In consideration of being granted the right to visit The Shiloh Group Property ("TSG") located at 930 Shiloh Road, in Windsor, California (the "Property"), I acknowledge, agree and represent that I am aware that the Property is a commercial business park which can be a dangerous environment, despite the safety precautions taken by TSG. I further agree and warrant as follows:

1. To the fullest extent permitted by law, I hereby release, waive, and discharge, on behalf of myself, my heirs, assigns, guardians, and legal representatives, any and all claims, damages, or losses I may have against TSG, its individual officers, administrators, employees and agents, acting officially or otherwise, arising from any and all injuries that I may incur during my visit to the Site, including, but not limited to, liability for property damage or loss, or bodily, personal or mental injury, including death, and further covenant that I will not sue TSG for any and all injuries or claims I may suffer during any Site visit.
2. I agree to hold harmless and indemnify TSG against any liability or damages that TSG may incur arising from my negligence during my visit to the Site.
3. I acknowledge that it is my sole responsibility to evaluate carefully the risks inherent in visiting the Site and that I have fully considered those risks, including, without limitation, dangers posed by willful or negligent conduct of myself and/or by others.
4. I acknowledge and voluntarily assume full responsibility for, and full risk of, property damage or loss, or bodily, mental, or personal injury, including death, relating to my visit to the Site.
5. I acknowledge that I am not an employee of TSG or any of its agents during my visit to the Site.
6. I agree that I shall use due care upon entry onto the Site, not undertake any act that may result in injury, not interfere with any activities at the Site, or touch or handle any materials found at the Site.
7. I agree that the following precautions must be observed at all times during the site visit:
 - a. Hard hats, safety vests, safety glasses and appropriate flat soled footwear must be worn;
 - b. All warning signs and barricades must be obeyed;
 - c. Do not stray from approved path for ingress and egress;
 - d. Do not enter areas with inadequate lighting;
 - e. Be aware of and stay clear of any overhead hazards;
 - f. Smoking is prohibited;

- g. Do not touch or walk on wires, piping, ductwork, conduit or other construction materials of any kind;
- h. Climbing on ladders or scaffold is prohibited
- i. Do not lean on or reach beyond any handrails or barricades
- j. Be aware that walking surfaces may be uneven or have other impediments and that extreme care should be taken with each step.

- 8. I agree that if any portion of this document is held invalid, the remaining provisions shall be binding and continue in full force and effect.
- 9. I acknowledge that the Site visit and its activities have been explained to me, and all of my questions answered to my complete satisfaction.

I have read the Visitor Release Form and Waiver of Liability carefully, understand its significance, and voluntarily agree to all of its terms.

THIS IS A RELEASE OF LEGAL RIGHTS. READ CAREFULLY BEFORE SIGNING

Visitor (print name): _____

Signature: _____

Date: _____

NOTE: All required signatures must be completed and this Form returned before the Visitor may visit the Site.